

MINUTES
LAWTON CITY COUNCIL REGULAR MEETING
AUGUST 14, 2018 – 6:00 P.M.
LAWTON CITY HALL
COUNCIL CHAMBERS/AUDITORIUM

Fred L. Fitch, Mayor
Presiding

Also Present:
Jerry Ihler, City Manager
Frank Jensen, City Attorney
Traci Hushbeck, City Clerk
COL Don A. King, Fort Sill Liaison

Mayor Fitch called the meeting to order at 6:05 p.m. Notice of meeting and agenda were posted on the City Hall notice board as required by law. Invocation was given by Pastor Daniel Litchford, Calvary Baptist Church, followed by the Pledge of Allegiance.

ROLL CALL

PRESENT: Bob Morford, Ward One
 Keith Jackson, Ward Two
 Caleb Davis, Ward Three
 Dwight Tanner, Jr., Ward Five
 Sean Fortenbaugh, Ward Six
 Onreka Johnson, Ward Seven
 Randy Warren, Ward Eight

ABSENT: Jay Burk, Ward Four

STATE OF THE CITY ADDRESS – MAYOR FRED L. FITCH

Mayor Fitch read highlights from the State of the City speech. The entire speech is posted on the website and on file in the City Clerks Office.

PRESENTATION FROM DEWBERRY ARCHITECTS, INC. PROVIDING STATUS
REPORT ON PUBLIC SAFETY FACILITY

Jim Healey, Project Manager for Dewberry Architects updated the council on the public safety facility project.

Tanner questioned if Mr. Healey does a lot of contract work in the state of Oklahoma.

Mr. Healey stated they do a lot of projects in Oklahoma.

Tanner questioned if Mr. Healey was familiar with state law regarding change orders as far as the amount.

Mr. Healey stated yes.

AUDIENCE PARTICIPATION:

Bill Ramsey, 6803 NW Crestwood Drive, stated he is concerned about the situation at the intersection of Rogers Lane and I-44 and the speed limit on Rogers Lane as you approach the intersection where the construction work is being completed. As you go east on Rogers Lane towards the underpass at Fort Sill Boulevard there are signs saying work zone ahead and then more than a half mile from the intersection, the speed limit is reduced from 50 mph to 35 mph. He spoke to Council Member Fortenbaugh and the City Manager and he was told that the signs were put in by the Oklahoma Department of Transportation (ODOT) and it was up to ODOT as to whether it would remain. There is no work being done on Rogers Lane anywhere where the 35 mph starts and as you get to the light on the west side of the interstate. He spoke to a representative from ODOT and was told they put in the 35 mph signs because they were going to work on the turn off to Fort Sill Boulevard. He stated the speed limit on Rogers Lane should be 55 mph until you get to about 300 yards from the intersection and then it would be good to reduce it to 45 mph. There is no need at all for it to be 35 mph more than a half mile back. This basically constitutes a speed trap and residents are getting tickets from the Lawton Police. He is asking that contacts be made with ODOT and get them to do a reasonable safety issue and continue the 50 mph until you get 300-400 yards from the work zone.

Mayor Fitch stated that ODOT is in charge of the project.

Ihler stated that is a state highway and it is 100% administered, funded and constructed by the state. He did call Jay Earp, who is the chief engineer over division 7 at ODOT and he was told that the 35 mph sign that is ½ mile ahead indicates that it is 35 mph ahead. He also indicated that in the last five years there have been 75 people killed through construction sites, so they are placing a large emphasis on the safety of their workers and that is the reason for the 35 mph speed limit slowing people down as soon as possible.

CONSIDER APPROVAL OF MINUTES OF LAWTON CITY COUNCIL REGULAR
MEETING OF JULY 24, 2018.

MOVED by Warren SECOND by Fortenbaugh to approve the minutes of Lawton City Council regular meeting of July 24, 2018. AYE: Morford, Jackson, Davis, Tanner, Fortenbaugh, Johnson, Warren. NAY: None. MOTION CARRIED.

CONSENT AGENDA

Mayor Fitch stated item #4 will be stricken from the agenda.

Tanner requested item #15 be considered separately.

MOVED by Jackson SECOND by Morford to approve the consent agenda with the exception of items #4 and #15. AYE: Morford, Jackson, Davis, Tanner, Fortenbaugh, Johnson, Warren. NAY: None. MOTION CARRIED.

1. Consider the following damage claims recommended for approval: Petra Edmondson in the amount of \$94.67 and Judith Nazaryk in the amount of \$1,115.88. Exhibits: Legal Opinions/Recommendations, **Resolution No. 18-57**.
2. Consider the following damage claims recommended for denial: Gary and Nancy Rice in the amount of \$525.89 and Patsy Wetmore in the amount of \$250.00. Exhibits: Legal Opinion/Recommendation.
3. Consider adopting a resolution approving the joint petition settlement and making payment in the workers' compensation claim of Michael Hardrick. Exhibits: **Resolution No. 18-58**.
4. Consider a request from the Ware District Committee, a committee of the Lawton Fort Sill Chamber of Commerce, to designate the monthly "Ware on C" event as a City co-sponsored event. Exhibits: None. **STRICKEN**
5. Consider approving the waiver of fishing and boat fees set forth in Lawton City Code Article A-19-2-214 (Water Sports and Boating) and Article A-19-3-303 (Fishing) in the total amount of \$640.00 for Rods4Warriors veteran's fishing derby taking place on September 29, 2018 at Lake Ellsworth. Exhibits: None.
6. Consider approving a request to enter into a memorandum of understanding with the Comanche County Sheriff's Office (hereinafter "CCSO") and the City of Lawton authorizing the utilization of the Lawton Police Department's Training Facility to train their new deputies in the Council of Law Enforcement and Training's Basic Academy (CLEET) which has been authorized by formal board action. Exhibits: Copy of the Memorandum of Understanding.
7. Consider approving a request to enter into a memorandum of understanding with the Kiowa County Sheriff's Office (hereinafter "KCSO") and the City of Lawton authorizing the utilization of the Lawton Police Department's Training Facility to train their new deputies in the Council of Law Enforcement and Training's Basic Academy (CLEET) which has been authorized by formal board action. Exhibits: Copy of the Memorandum of Understanding.
8. Consider approving a request to enter into a memorandum of understanding with City of Sterling, Oklahoma (hereinafter "Sterling") and the City of Lawton authorizing the utilization of the Lawton Police Department's Training Facility to train their new officers in the Council of Law Enforcement and Training's Basic Academy (CLEET) which has been authorized by formal board action. Exhibits: Copy of the Memorandum of Understanding.
9. Consider approving contract with Journey Productions for technical support services for the 2018 International Festival for September 24 through October 1, 2018. Exhibits: Contract on file in City Clerk's office.

10. Consider approving a Change Request to the City of Lawton's cloud-based Ceridian Human Capital Management (HCM) system contract and authorize the Mayor to execute the Change Request. Exhibits: Ceridian Dayforce Services Change Request.
11. Consider approving the construction plat and record plat for Dunbar Commercial Addition, Part 2, accepting an easement, and accepting an escrow agreement for functional improvements. Exhibits: Location Map, Escrow Agreement and Easement are on file in the City Clerk's office.
12. Consider accepting approximately 250 feet of 8-inch sanitary sewer line, located on the east side of SW 52nd Street north of Lee Boulevard, in Lot 1, Block 1, Dunbar Commercial Addition. Exhibits: Location Map.
13. Consider approving an engineering agreement with Stearns, Conrad and Schmidt Consulting Engineers, Inc. d/b/a SCS Field Services for professional environmental engineering services for operations, monitoring, and maintenance of the Landfill Gas Collection & Control System. Exhibits: A copy of the agreement is on file in the City Clerk's office.
14. Consider adopting a resolution and authorizing the Mayor and City Clerk to execute a project agreement for street improvements previously programmed by the City and designated as Federal Aid Project STP-116B(059), State Job Number 19144(04) which consists of Grade-Drain-Surface-Traffic Signals for West Gore Boulevard from West 82nd Street to West 67th Street, and authorize staff to pay the City Match fund invoice prior to bidding this project. Exhibits: **Resolution No. 18-59**. Project Agreement is on file in the City Clerk's office.
15. Consider approval of Change Order #3 by Flintco, LLC to their contract with the City of Lawton for construction of the Public Safety Facility at the intersection of Railroad Road and Gore Boulevard. Exhibits: Change Order No. 3 - Public Safety Facility.

Tanner stated he has three concerns with this change order. One is that it may possibly be a design flaw and in his opinion the architect firm should be responsible for paying for it. Secondly, this change order has already been illegally approved by a former city staff member and thirdly, this former city staff member has had a past history of violating state law concerning these change orders. It is his understanding that the change order is for concrete foundation revisions, so it may or may not be a design flaw. If it is a design flaw he believes the Dewberry Architect firm should be responsible. The larger issue is that this change order has already been approved by a former city staff member violating state law and our own city attorney is not signing off on it. This same city staff member has had a history of violating the same state law and possibly criminal law by approving change orders and forging the signatures of the Mayor and City Clerk on documentation for the fire station that was built on Bishop Road. He would like to postpone this item indefinitely and form a council committee, in which he would like to chair, to investigate these matters.

Mayor Fitch stated the former employee has been addressed and is gone.

Tanner stated city staff is asking the council to endorse this former city employee's illegal action. He would like to postpone this item and form a council committee and look into the issue a little further. The work has already been done.

Mayor Fitch stated with the dollar amount we got what we paid for.

Tanner stated Mr. Healey from Dewberry Architects said he was very familiar with state law that governs change orders and he would like him to come up and answer a question. He questioned if Mr. Healey was aware that this former city staff member approved the change order.

Ihler stated he would like to clarify something. The former staff member authorized them to proceed, he did not approve the change order. Only the council can approve the change order.

Tanner stated Flintco and the contractor knew that state law required this change order, if over an amount of \$40,000, had to be brought back to the governing body. Is this correct?

Mr. Healey stated this is his understanding.

Tanner stated so you went into it knowing that proceeding with the work you were violating state law by not bringing this change order back to the governing body to look at the details concerning the change order and possibly approving or neglecting to approve the change order.

Mayor Fitch stated accusations are being made about things where we don't know what really happened.

Tanner stated the committee can look into these matters.

MOVED by Tanner SECOND by Davis to table and form a committee to investigate this issue. AYE: Morford, Jackson, Davis, Tanner, Fortenbaugh, Johnson, Warren. NAY: None. MOTION CARRIED.

Mayor Fitch stated Council Member Tanner will chair the committee and Council Members Morford, Warren and Davis will serve on the committee.

16. Consider awarding contract (CL18-050) Rental of Portable Restrooms to ARA Equipment Rentals of Lawton, OK. Exhibits: Department Recommendation, Abstract of Bids, Price Sheet.
17. Consider extending contract (RFPCL16-027) Rental or Lease Work Clothing to Cintas of Lawton, OK for an additional three (3) months. Exhibits: Department Recommendation, Contract Extension Form, Price Sheet.

18. Consider approving appointments to boards and commissions. Exhibits: None.

Museum of the Great Plains Authority

Blaine Adair
McMahon Member
New Member
06/30/2019

19. Consider approval of payroll for the periods of July 16 – August 12, 2018.

NEW BUSINESS ITEMS:

20. Hold a public hearing and consider a resolution amending the Land Use Plan from Residential/High Density to Commercial and an ordinance changing the zoning from R-4 High Density Apartment District to C-4 Tourist Commercial District zoning classification on property located at 615 NE Flower Mound Road. Exhibits: Resolution No. 18-___, Ordinance No. 18-___ with Site Plan, Location Map, Applications, Draft CPC Minutes.

Richard Rogalski, Community Services Director, stated this request is for a 1.755 acre tract on the east side of NE Flower Mound Road. It is adjacent to the Sherwood Village Mobile Home Park. The property owner is Frank Richards and the applicant is George Gill, III. The proposed use is a mini warehouse. The existing land use across the street is low density residential with vacant land to the north. The land use that is being requested is commercial. The existing zoning is a mixture of R-2 to the west, A-1, R-1, A-1 to the north and R-4 behind the property. They had requested C-4 but the staff recommendation is always going to be the most restrictive zoning that allows the use. C-4 is tourist commercial and also allows billboards. The staff recommendation was C-1 with a use permitted on review and that was actually approved by the planning commission. It does allow the full use of the land in the way the applicant wants to use it. There is a binding site plan with this. At the request of staff the entrance was moved back a little so that vehicles can be off of Flower Mound Road as they stop at the gate. The site plan is good in terms of staff and the applicant is happy with it as well. The City Planning Commission held a public hearing on this request on July 12, 2018, and by a vote of 9 – 0, recommended approval of amending the Land Use Plan to Commercial and a change of zoning from R-4 to C-1 Local Commercial District subject to conditions. Miniwarehouses are allowed in the C-1 district as a Use Permitted on Review if abutting an arterial street. Flower Mound Road is classified as an arterial street. The CPC approved a Use Permitted on Review for the miniwarehouses. The Use Permitted on Review is contingent upon the City Council approving the C-1 zoning classification. The CPC also approved a Use Permitted on Review for a six-foot tall ornamental fence within the front yard setback as

Davis questioned when someone applies for a rezoning, why is it always the recommendation to give them the most restrictive use of zoning instead of giving them the C-4.

Rogalski stated that staff is looking at making the least impact on the surrounding area. In this case it is a residential area and this is the only piece of commercial development.

PUBLIC HEARING OPENED. No one appeared to speak and the public hearing was closed.

MOVED by Davis SECOND by Morford to adopt **Resolution 18-60**. AYE: Morford, Jackson, Davis, Tanner, Fortenbaugh, Johnson, Warren. NAY: None. MOTION CARRIED.

MOVED by Davis SECOND by Morford to adopt **Ordinance 18-22** changing the zoning from R-4 to C-1, waive the reading of the ordinance, read the title only. AYE: Morford, Jackson, Davis, Tanner, Fortenbaugh, Johnson, Warren. NAY: None. MOTION CARRIED.

(Title read by City Attorney)

Ordinance 18-22

An ordinance changing the zoning classification from the existing classification of R-4 High Density Apartment District to C-1 Local Commercial District Zoning Classification on the tract of land which is hereinafter more particularly described in section one (1) hereof; approving the site plan attached as Exhibit A; and authorizing changes to be made upon the official zoning map in accordance with this ordinance.

21. Consider authorizing closing out the 2005 and 2008 Capital Improvement Program(CIP)'s and directing financial services to transfer the remaining funds to the 2015 Sales Tax Extension CIP and 2016 CIP. Exhibits: Exhibit "A" Summarizing the 2005 CIP, Exhibit "B" Summarizing the 2008 CIP, 2005 & 2008 CIP Financial Summaries. **STRICKEN**
22. An ordinance pertaining to finance and taxation amending Section 10-19-1904 (purpose of revenues), of Article 10-19 (2016 Capital Improvement Sales Tax Ordinance), Chapter 10, Lawton City Code, 2015, by deleting the purpose new and alternate water resource improvements, retaining the purpose existing water resource improvements, and adding a new purpose for infrastructure improvements in furtherance of industrial development and improvements to information technology systems to the stated purposes of the revenues derived from said sales tax; declaring that under the amended purposes revenues will continue to be used for improvements to existing water sources, sewer rehabilitation and expansion projects, street reconstruction and overlay projects, landfill cell expansion projects, and Lawton Area Transit system improvements, all as provided in the current ordinance, along with the new purposes of infrastructure improvements in furtherance of industrial development and improvements to information technology systems; providing that the tax shall remain at the same tax rate (with no increase in Lawton sales taxes) and be limited to the same period commencing January 1, 2016, and terminating December 31, 2025 as specified in the current ordinance; making the tax cumulative; providing that the governing body may make administrative and technical changes which do not affect the tax rate or period of the tax; requiring approval of this ordinance by a majority of the registered, qualified voters of the city voting at an election to be held for such purpose as provided by law; providing for severability of the provisions of this ordinance; providing for continuation of this ordinance in the event the purpose of revenue provision is declared invalid; providing for an effective date; and requiring the full text to be published. Exhibit: Ordinance No. 18-__.

Davis stated this is to send out to a vote of the people to repurpose some of the money in the 2016 sales tax ordinance. There are three phases of that project and the third phase is actually building the treatment facility for the underground water. Our daily demand for water has gone down from when we sent this out for this CIP. We have also fixed the problem we had at Lake Waurika where the lower pump unit was silted in and that water was unavailable when we went through the drought, so we have millions of gallons of water available now since those upgrades have been made as well as through this CIP we have had major repairs done to pipelines especially coming through Fort Sill where we were losing millions of gallons of water. The building of the treatment facility would not be necessary because we don't need the water. We would have the opportunity to still install the wells, put the pipes in to the location where we would build the facility and then we would defer that part of the project and take the money that was left and it would give us the opportunity to put that money towards infrastructure, meaning gas, water, electric or rail to a plot of land in order to make it shovel ready. The Lawton Economic Development Corporation (LEDC) has given us updates and let us know that the position we are in is that we don't have any shovel ready sites large enough to facilitate manufacturing companies. We don't have any money to develop those sites and haven't had for a very long time. This is an opportunity to defer that part because there is no sense in building a facility that we are not going to use for 15 or 20 years and use that money for the development of an industrial park to bring in high paying jobs for Lawtonians. He stated this would also allow us to put some money toward upgrading and securing our IT system.

Tanner stated he told Council Member Davis he would support this plan to send it out to the vote of the people and let them decide what is more important. He does like the idea that we are not giving up the alternative water resources plan all together, we are going to drill the wells and run the pipe to the treatment plan, we are just holding off on the water treatment facility. Our LEDC people have come to us and told us what we need. First we need seed capital, maybe some incentive money to either help existing industry expand or possibly encourage new industry to move to Lawton, but there is not enough money in hotel/motel tax to build this \$25 million shovel ready industrial park where we could get some good paying manufacturing jobs. He stated water is economic development and we are not totally giving up on the plan. This is flexible and we don't really have to proceed with spending the money on the industrial park, it just gives the elected officials the flexibility to do so. He is for sending this out to a vote of the people and letting them decide.

Morford stated there are no figures for either the industrial park or the IT upgrades. He is still afraid to let water go. Three years ago this was a real problem and we are still in extreme drought. He stated it looks like we don't really know what we need for IT and for the industrial park and he would hate to shut down the water deal.

Davis stated we are not shutting down the water deal, we are years away from building this facility. We are still in phase one of drilling the wells. We would have to drill the test wells, install the actual well head and then there is a series of negotiations that would have to happen for acquiring land and easements from that site to the site where the facility would be built. Once that is completed then the conveyance system would have to be put in. All of that is still in here. It is reasonable to believe that the facility would not even be built until the end of this CIP. He stated this would free up approximately \$25 million, but we don't know exactly how much

money this frees up because we have not gotten through phase one much less phase two and we have not negotiated any deals for the land, easements or the conveyance system, so we are not sure how much this frees up. According to estimates by city staff it would free up about \$25 million. He stated Garver Engineering did a study on seven different sites and gave an approximate price tag as to the development of those sites and making them shovel ready. From that report is where we get the need for \$20 - \$25 million to get any one of the seven sites ready.

Morford stated the way it was presented to him is that IT would be the second priority and what was left over would go to industrial.

Mayor Fitch stated he does not think that the council has prioritized these needs. He stated IT is very vital after what we have gone through last summer and he is supportive of this project. He would have liked to have seen some more definite costs on the IT upgrades and a new system with an RFP before they go out to the public with this. With regards to the industrial issue, we have been out of viable land for economic development. He stated CCIDA has 480 acres to the south of Goodyear which is in the proximity of gas, water and sewer. Within the past month CCIDA purchased 320 acres to the north of Goodyear which has railroad access. Stillwater Central has said they would do the spur going into that 320 acres. The spur that we would need to run from the line down to the 480 acres could be \$1.5 to \$2 million. He stated Dr. Tom Thomas did this study and we came up with about seven sites. There are situations on both the east and the west and the west is the most logical because of the presence of Goodyear and the industrial park. The problem with the east side is that there is so many multiple owners and a large tract of the land that is purchasable, half of that property is located in the flood plain. The rail cost on the east side could be as much as \$15 million or more. Getting gas out to the west side is a \$15 million cost. There is a gas line on the east side but you are tapping a line with only so much capability or surplus of gas to be serviced into that industrial park area. He would have liked to have more concrete figures from the IT side of it because he feels they have got to move with IT first because he is concerned with what happened last year but he is also concerned about the water issue because we were down to 40%.

Ihler stated we were down to 40% of our overall capacity from all three lakes. He stated we were a week away from going into stage four of our conservation stages. He stated this is an ongoing process with all three aspects we are looking at. With the IT situation we are making good progress in evaluating and making some decisions but it will take more time to come up with some cost estimates. We will continue to work with LEDC and the shovel ready sites. They will have to go through the design process and it will take time to do the design after the decision is made where they are going to provide the infrastructure. With regards to the alternative water supply, we go through the test hole stage of drilling the wells and the time frame the consultant has provided to us is that by the end of 2020 we could be through the process of the design of the conveyance and the test wells to where we could get the water to the plant, but during that same timeframe we would continue on with doing the design for the construction of the process that needs to be utilized at the treatment plant to treat the ground water. That construction period would take between 12-15 months. You are looking at the 2022 timeframe before that is in place. We are looking at deferring the process of the alternative water supply but continue to monitor it in such a fashion that if we get to a point where we get to a serious drought and we get below 40%-50% of our water supply, then we need to move forward

and go the actual construction of the water treatment plant improvements to be able to do the design. The best situation is that we get to that point in 2021 timeframe where the design is sitting on the shelf ready to bid and we never have to bid it until we get into the next CIP program in 2026 because our lake levels are full. He have to be cognizant of the fact that if we get to a certain point then we have to move forward.

Mayor Fitch questioned if we get to that certain point and we have to move forward, if we would put this in place, this plan right now, do we have to go back to a vote of the people.

Davis stated that is one of the few reasons why we don't put in there \$18 million to industrial development, because we need the ability to monitor the water situation as we invest money into the infrastructure of the industrial development park. If we did put a number then we could be in a position where we would have to go back out to the vote of the people and get money back for the water treatment plant. This allows the council to monitor it and as deem necessary or that is prudent to invest money into the infrastructure of the industrial park.

Mayor Fitch stated we are not sure how much money we will have available and we don't know how much the IT system will cost and it will be some time before we have those numbers.

Davis stated we may not have those figures until into next year.

Warren stated this just gives us the ability to create a bank that we can start putting money in and when we find out how much the IT problem is going to cost us to fix, that money will have started building in that bank. We can also start looking at the water situation and we will already be moving forward on it and when we start looking at the shovel ready spots we still have that bank ready and we can move that bank money around to wherever we need it depending on if we get a lot of rain or not.

Mayor Fitch stated the bank money will build up because the sales tax is coming in. It will be 2025 before we have any CIP funds available for IT issues and we can't wait that long.

Brad Cooksey, President of the Lawton-Fort Sill Economic Development Corporation, stated last year they did the infrastructure study and they did locate seven spots around Lawton where they thought would be a good place to invest into an industrial park. When they get leads they don't have anything to offer them. LEDC owns 70 acres south of the airport but it lacks rail and it has height restrictions. They have 18 acres in the middle of the Westside industrial park between Goodyear, Republic Paper and Bar-S, but it is land locked and there is not a lot of land. Companies are looking for more than 100 acres. The key term is "shovel ready" and that is with all the utilities and rail, but we don't have any shovel ready land right now. CCIDA owns 480 acres south of Goodyear but there are no utilities and no rail. The piece of property that CCIDA in joint effort with LEDC is getting will provide us with shovel ready land the minute they purchase it. They will work hard to fill that industrial park but at some point we will run out of gas. They feel that this is a great opportunity as a city to make a true investment in infrastructure that would help for the benefit of economic development. They need shovel ready land to be competitive.

Morford stated he thought LEDC recently acquired 320 acres.

Mayor Fitch stated it is under contract and it closes on the 20th.

Morford questioned what LEDC would use the money for.

Cooksey stated the shovel ready land they are talking about is ready to go but they are low on gas. He stated southwest Oklahoma is a manufacturing community and that is the direction they are shooting for and through the infrastructure study there was some information that we are more towards the manufacturing line of business.

Phil Kennedy, Chairman of LEDC, stated he appreciated the council receiving the information by Dr. Thomas and looking at ways that we can act upon this. This will change their paradigm of marketing from filling out RFP's and saying that we have a piece of property and that we can get it ready. If they can get this 320 acres shovel ready, then they can go out and market that we have land and we can go out and contact people. This will change their marketing efforts and they can be more proactive.

Morford questioned when it could be shovel ready.

Kennedy stated the possibility of the 320 acres definitely brings the completion date a lot quicker and the timeframe would be possibly 12-24 months. The 320 acres is closer to rail access but they still have to bring utilities there, but some of those utilities are closer and they can use a lot of those things that would actually speed that process up. The 480 acres presents other challenges.

Warren stated this is going to give the citizens an opportunity to basically speed up what can happen in Lawton. It really isn't going to change anything, because the IT, water and shovel ready are all going to happen, this just allows it all to happen faster. We can't wait two or three years to do the IT.

Mayor Fitch stated right now we cannot address IT, we cannot address economic development until 2025. The IT issue has to be addressed as quickly as possible. All we are doing is reallocating some resources.

Morford stated it does not look like there is enough money to address all three issues. He agrees it all has to be done, but is this the only way.

Mayor Fitch stated yes it is, right now. If you don't do this, you are waiting on IT and economic development until 2025.

Warren stated then you have 12-24 months after that until that money takes effect.

MOVED by Davis SECOND by Jackson to adopt **Ordinance 18-23**, waive the reading of the ordinance, read the title only and establishing an effective date. AYE: Morford, Jackson, Davis, Tanner, Fortenbaugh, Johnson, Warren. NAY: None. MOTION CARRIED.

(Title read by City Attorney)

Ordinance 18-23

An ordinance pertaining to finance and taxation amending Section 10-19-1904 (purpose of revenues), of Article 10-19 (2016 capital improvement sales tax ordinance), Chapter 10, Lawton City Code, 2015, by deleting the purpose new and alternate water resource improvements, retaining the purpose existing water resource improvements, and adding a new purpose for infrastructure improvements in furtherance of industrial development and improvements to information technology systems to the stated purposes of the revenues derived from said sales tax; declaring that under the amended purposes revenues will continue to be used for improvements to existing water sources, sewer rehabilitation and expansion projects, street reconstruction and overlay projects, landfill cell expansion projects, and Lawton Area Transit System improvements, all as provided in the current ordinance, along with the new purposes of infrastructure improvements in furtherance of industrial development and improvements to information technology systems; providing that the sales tax rate shall remain at the same sales tax rate (with no increase in city of Lawton sales taxes) and be limited to the same period commencing January 1, 2016, and terminating December 31, 2025 as specified in the current ordinance; making the tax cumulative; providing that the governing body may make administrative and technical changes which do not affect the sales tax rate or period of the sales tax; requiring approval of this ordinance by a majority of the registered, qualified voters of the city of Lawton voting at an election to be held for such purpose as provided by law; providing for severability of the provisions of this ordinance; providing for continuation of this ordinance in the event the purpose of revenue provision is declared invalid; providing for an effective date; and requiring the full text to be published.

23. An ordinance authorizing the calling and holding of an election in the City of Lawton, state of Oklahoma, for the purpose of submitting to the registered qualified electors of said city the question of the approval or rejection of ordinance no. 18-__ of the city relating to the amendment of the existing 2016 Capital Improvement Sales Tax of the city and defining the amended purposes for such tax; providing for severability, declaring an emergency, and requiring the full text be published. Exhibits: Ordinance No. 18-__ and Election Proclamation.

Mayor Fitch stated they can vote on this now because they just passed the prior item. This is strictly for the calling and holding of the election.

MOVED by Davis SECOND by Warren to adopt **Ordinance 18-24**, waive the reading of the ordinance, read the title only and establishing an effective date of thirty days from today. AYE: Morford, Jackson, Davis, Tanner, Fortenbaugh, Johnson, Warren. NAY: None. MOTION CARRIED.

(Title read by City Attorney)

Ordinance 18-24

An ordinance authorizing the calling and holding of an election in the city of Lawton, State of Oklahoma, for the purpose of submitting to the registered qualified electors of said city the question of the approval or rejection of Ordinance No. 18-23 of the city relating to the amendment of the existing 2016 capital improvement sales tax ordinance

of the city of Lawton and defining the amended purposes for such sales tax; providing for severability, declaring an emergency, and requiring the full text be published.

MOVED by Davis SECOND by Morford to approve the emergency clause. AYE: Morford, Jackson, Davis, Tanner, Fortenbaugh, Johnson, Warren. NAY: None. MOTION CARRIED.

24. Consider amending Section 19-4-411, Article 19-4, Chapter 19, Lawton City Code, 2015, regarding the City of Lawton Controlled Elk Hunt permit drawing by establishing a non-refundable administrative application fee; providing for voiding the application related to any dishonored check and other causes; designating the administrative application fees be deposited within the Lakes Division budget for improvements at the city lakes; providing for severability and declaring an effective date. Exhibit: Ordinance No. 18-__.

Jack Hanna, Parks and Recreation Director, stated at the November 15, 2017 meeting, the Lakes and Land Commission considered and approved a recommendation to the City Council regarding the City's Controlled Elk Hunt permit drawing. The administrative work in processing applications for the City Elk Hunt drawing held each September has proven to be monumental. For the 2017 City Elk Hunt drawing, staff processed over 600 Elk Hunt applications and fielded 50 to 100 phone calls daily with questions regarding the hunt. The Commission recommends amending Section 19-4-411 to establish an administrative application fee. The amendment includes providing for voiding the related application when a check for the application fee is returned dishonored, when the fee is not submitted with the application, and/or when the information on the application form is incomplete or illegible. A five dollar, (\$5.00), non-refundable administrative application fee for all City Controlled Elk Hunt applications would be established separately by resolution amending Appendix A, Schedule of Fees and Charges. The Commission also proposed that these permit fees be designated for deposit within the Lakes Division budget for improvements at the lakes. He stated there is a change in the proposed ordinance under Section 1 B. The last line should read "A successful applicant drawing an elk hunting permit shall further be subject to the usual other hunting regulations and permit requirements as provided by this Code and to the fees as referenced in the Appendix A Schedule of Fees and Charges."

Davis questioned if the council can vote on this ordinance if this language was just added and there was not a 48 period that this was on the agenda.

Jensen stated this was not a major amendment. He stated they can do a floor amendment as long as they are clear, on the record, what is being changed.

Davis questioned if we are charging more for the permit fee.

Hanna stated now when any citizen wants to apply for the elk hunt, the application is free of charge. This would change to a \$5 fee to go with the application. The elk hunt has grown significantly and has put more restraints on staff.

MOVED by Tanner SECOND by Warren to adopt **Ordinance 18-25** as amended, waive the reading of the ordinance, read the title only and establishing an effective date of thirty days from today. AYE: Morford, Jackson, Davis, Tanner, Fortenbaugh, Johnson, Warren. NAY: None. MOTION CARRIED.

(Title read by City Attorney)

Ordinance 18-25

An ordinance pertaining to hunting, amending Section 19-4-411, Article 19-4, Chapter 19, Lawton City Code, 2015, regarding the city of Lawton controlled elk hunt permit drawing by establishing a non-refundable administrative application fee; providing for voiding the application related to any dishonored check and other causes; designating the administrative application fee be deposited within the lakes division budget for improvements at the city lakes; providing for severability and declaring an effective date of thirty days from today.

25. Consider adopting a Resolution amending Article A-19-4, Appendix A, Fees and Charges, Lawton City Code, 2015, regarding the City of Lawton Controlled Elk Hunting Permits by establishing a non-refundable administrative application fee related to the elk hunting permit drawing. Exhibits: Resolution No. 18-___; Exhibit “A” for Res No. 18-_____.

MOVED by Tanner SECOND by Warren to adopt **Resolution No. 18-61**. AYE: Morford, Jackson, Davis, Tanner, Fortenbaugh, Johnson, Warren. NAY: None. MOTION CARRIED.

26. Consider an ordinance amending Section 6-6-1-601 modifying the exemption from the requirement to obtain a building contractors registration certificate for property owners performing work on their own property. Exhibits: Ordinance No. 18-___.

Rogalski stated this was an item that Council Member Tanner brought to their attention. The Lawton City Code currently provides an exemption from the requirement to obtain a building contractors registration certificate for property owners performing work on their own property in which they also reside. This ordinance expands the exemption to all property owned by the individual. All the work must be performed by the property owner, other than that work performed by specialized trade contractors who hold a valid certificate from the City of Lawton. To obtain this exemption the owner must complete an affidavit of ownership for the subject property. This exemption does not relieve the owner from obtaining a building permit as required by this code.

Morford questioned what was required for an affidavit of ownership.

Rogalski stated it is a statement saying that I own the property and I will be doing all the work.

MOVED by Tanner SECOND by Fortenbaugh to adopt **Ordinance 18-26**, waive the reading of the ordinance, read the title only and establishing an effective date of thirty days from today. AYE: Morford, Jackson, Davis, Tanner, Fortenbaugh, Johnson, Warren. NAY: None. MOTION CARRIED.

(Title read by City Attorney)

Ordinance 18-26

An ordinance related to building contractors registration certificates amending Section 6-6-1-601, Division 6-6-1, Article 6-6, Chapter 6, Lawton City Code, 2015, modifying the exemption for property owners performing work on their own property; providing for severability; and establishing an effective date of thirty days from today.

ADDENDUM:

BUSINESS ITEMS:

1. Consider accepting a \$3,000.00 donation to the Mayor's Commission on the Status of Women from various sponsors to be designated for 2018 Mayor's Commission on the Status of Women's scholarship program. Exhibits: None.

Mayor Fitch stated this item is to receive donations for six \$500 scholarships that were given by either businesses or individuals within the community.

MOVED by Davis SECOND by Johnson to accept a \$3,000.00 donation to the Mayor's Commission on the Status of Women from various sponsors to be designated for 2018 Mayor's Commission on the Status of Women's scholarship program. AYE: Morford, Jackson, Davis, Tanner, Fortenbaugh, Johnson, Warren. NAY: None. MOTION CARRIED.

2. Consider approving Change Order #2 for the construction of the 2012 CIP Local Street Reconstruction Project #2012-12, Phase I and assessing liquidated damages, accepting the project as constructed by A.E. Construction Co. and placing the Maintenance Bond into effect. Exhibits: The Maintenance Bond and Change Order #2 are on file in the City Engineer's office.

George Hennessee, City Engineer, stated they are here to discuss the 2012 CIP Local Street Reconstruction Project. It was awarded to A.E. Construction. It has been completed and they are trying to wrap up the acceptance of that project. Phase I was actually bid after Phase II was bid. The council awarded that project in July 2015 and they delayed the notice to proceed until September 2015 so there was a 60 day delay before that was awarded. The project was set up for a 300 day process and the contractor has taken much more time than that to complete the project. Because of the delay in completion the contract has a clause for liquidated damages. He has tried on four occasions to visit with Mr. Espinosa to arrive at his analysis of the days that he used and to his opinion, he has performed perfectly on the job and there are no liquidated damage due. Through his research and going through the daily reports, emails and correspondence, it appears that he does in fact have a deficit in his time allowed. He believes that deficit is defined in change order #2. It appears that he has gone 222 days over his allocated timeframe and the specified liquidated damages are \$2,000 a day. That ends up being a charge of \$440,000.

Davis questioned if these two items included everything they spoke about a few months ago when they went through those projects.

Hennessee stated they had visited with Mr. Espinosa and they have allocated about 132 days after a notice to proceed before he put a shovel in the ground. They visited with him and they did allow for rain delays and utility delays.

Davis stated in his ward on K Avenue he believes it was 26 panels that had a large crack.

Hennessee stated there were only 2 or 3 panels.

Davis questioned what they decided about him cutting those out and removing those and replacing them.

Hennessee stated their recommendation to him has been to remove half the panel because the crack is on the interior half.

Davis questioned if Mr. Espinosa has made any commitment.

Hennessee stated the alternative would be to go through the bonding company and get it done as a maintenance bond issue.

Davis stated there are a couple sections the Mr. Espinosa did on a street in his ward that has cracked and separated about $\frac{3}{4}$ of an inch. City staff has been trying to get him to cut those out and replace them. He questioned if it would be possible to make a substitute motion to add into this agreement that he replace those sections.

Jensen stated that is not a change order, this is defective work that he is responsible for and demand has been made of him to repair that defective work and he is refusing to do so. We are going to have an issue here one way or another. If he refuses we will go against his bonding company.

MOVED by Morford SECOND by Davis to approve Change Order #2 for the construction of the 2012 CIP Local Street Reconstruction Project #2012-12, Phase I and assessing liquidated damages, accepting the project as constructed by A.E. Construction Co. and placing the Maintenance Bond into effect. AYE: Morford, Jackson, Davis, Tanner, Fortenbaugh, Johnson, Warren. NAY: None. MOTION CARRIED.

3. Consider approving Change Order #2 for the construction of the 2012 CIP Local Street Reconstruction Project # 2012-12, Phase II and assessing liquidated damages, accepting the project as constructed by A.E. Construction Co. and placing the Maintenance Bond into effect. Exhibits: The Maintenance Bond and Change Order #2 are on file in the City Engineer's office.

Hennessee stated the design for Phase I was North of Cache Road and Phase II was South of Cache Road. They actually bid Phase II before they did Phase I. Mr. Espinoza had begun work on Phase II and had actually opened up streets on Summit, 10th Street and SW 27th Street. At that time there was a major storm event that displaced all the brick at Gore Boulevard and 2nd Street so they did the change order at that time to have him replace that brick with stamped

concrete, so we did direct him to go to that area and correct it because of the high traffic volume. Our contract has a clause that says that if he is directed, he is not to be charged liquidated damages, but he does not feel that the direction was significant enough to eliminate all the damages that the city incurred because of his lack of work. On Phase II he had a contract that was awarded February 24, 2015 and they inspected the last project in June 6, 2017 and with that he feels that they had liquidated damages of 195 days. The liquidated damages are for \$2,000 per day and that would come to \$390,000. He stated K Avenue would be in Phase II.

Davis stated this area on K Avenue was muddy from yard to yard for months and Mr. Espinoza had picked up and gone to a different job in a different city. It was unbelievable. We have an ordinance that says that a contractor that is in liquidated damages with the City is not eligible to bid on a City project for 36 months. He stated the recommended action is to waive that and not ban him for 36 months. He questioned if Mr. Espinoza has agreed to pay this based on these terms.

Hennessee stated he has not agreed to pay.

Davis stated he would like to make a substitute motion to accept the change order amount and stick to our ordinance of banning this contractor for the 36 months.

Hennessee stated the reason they put that clause in there is because Mr. Espinoza does a lot of concrete work for the City and he has an on call demand contract with the water/sewer group and he does that type of repair and they feel that he does have benefit to the City.

Davis stated he has been contacted by other contractors that are watching this tonight and are not happy. We have a Lawrence Street project coming up for bid soon and he will be bidding on that if we pass this after he just put residents in his ward through a year of having to park their cars blocks away and literally walk through mud with their kids and their groceries day after day because Mr. Espinoza decided to go to Frederick and jump on a contract where he felt he could make more money. If they waive what the ordinance states he feels they are setting precedence for other contractors. Why even have the ordinance.

Hennessee stated this is not a punishment, this is damages that the City has occurred due to the excess manpower required, the equipment that was required and the monitoring of the project.

Davis stated he understands there are not punitive damages allowed by law, but the reason for having liquidated damages is to protect our citizens from a contractor tearing up the streets, turning them into mud for blocks and leaving because he had an excellent contract in Frederick to go to work for that city. That is why we have liquidated damages and that is why he agrees with enforcing our ordinance to ban him for 36 months and get a contractor that has a little more respect for our citizens and gets the job done.

MOVED by Davis SECOND by Fortenbaugh to approve Change Order #2 for the construction of the 2012 CIP Local Street Reconstruction Project # 2012-12, Phase II and assessing liquidated damages, accepting the project as constructed by A.E. Construction Co. and placing the Maintenance Bond into effect and banning Mr. Espinoza for 36 months from bidding on projects

with the City of Lawton. AYE: Morford, Jackson, Davis, Tanner, Fortenbaugh, Johnson, Warren. NAY: None. MOTION CARRIED.

REPORTS: MAYOR/CITY COUNCIL/CITY MANAGER

Mayor Fitch introduced the new Garrison Commander, COL Don King.

Johnson stated she will be having a Ward 7 town hall meeting on August 23rd at Great Plains Technology Center. This weekend from 2-4 there will be a free community feeding at the Patterson Center.

Ihler introduced Diane Branstetter, the new finance director.

The Mayor and Council convened in executive session at 8:08 p.m. and reconvened in regular, open session at 8:31 p.m. Roll call reflected all members present excluding Tanner. (Tanner did not attend executive session).

EXECUTIVE SESSION ITEMS:

Mayor Fitch stated Council Member Johnson will be appointed to the council committee to look at fees.

27. Pursuant to Section 307B.1, Title 25, Oklahoma Statutes, consider convening in executive session to review the employment of Nathan M. Johnson as Municipal Judge, and in open session take other action as necessary. Exhibits: None.

Mayor Fitch read the title of item #27. No action was taken.

There being no further business to consider, the meeting adjourned at 8:32 p.m. upon motion, second and roll call vote.

FRED L. FITCH, MAYOR

ATTEST:

TRACI HUSHBECK, CITY CLERK